



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33962027

Date: OCT. 11, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a dancer and choreographer, seeks first preference immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we find that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(vii) and we will therefore withdraw the Director's adverse determination on that issue pursuant to our discussion below. However, we will dismiss the appeal because the Petitioner did not establish that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(ii)–(v) and (viii).

The Petitioner also maintains on appeal that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(i), which relates to lesser nationally or internationally recognized prizes or awards. However, because the Petitioner has not demonstrated that she meets four of the five evidentiary criteria claimed on appeal, she would not establish that she met three out of ten criteria even if we considered her claims regarding the criterion at 8 C.F.R. § 204.5(h)(3)(i). As such, we need not determine whether she meets the requirements of this criterion, nor do we need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we will reserve these issues. *See INS v.*

Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).¹

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner demonstrates that the beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

In the petition form, the Petitioner lists "dancers and choreographers" as her occupation and job title and states that her position requires her to "undergo rigorous auditions and rehearsals, dedicating hours each day to perfect complex dance movements and collaborate closely with instructors,

¹ Although the Petitioner previously claimed that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence of a high salary or other significantly high remuneration, we need not address this criterion as the Petitioner does not further pursue this claim on appeal. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived).

choreographers, and fellow dancers.” Therefore, it appears that the Petitioner bases her claim of extraordinary ability on her skills and experience as a dancer and choreographer.

The Petitioner does not claim or submit evidence to show that she received a major, internationally recognized award. She must therefore provide evidence showing that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner claims that she meets the elements of seven of these criteria, which are summarized below:

- (i), Recipient of lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display of the Petitioner’s work at artistic exhibitions; and
- (viii), Performance in a leading or critical role for distinguished organizations or establishments.

A. Criterion at 8 C.F.R. § 204.5(h)(3)(vii)

The Director determined that the Petitioner did not satisfy any of the claimed criteria. We find, however, that the Petitioner provided sufficient evidence that she met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires evidence that the Petitioner displayed her work at an artistic exhibition or showcase.

The record contains evidence that the Petitioner received two certificates of honor for her participation in two group dances – [REDACTED] – during two dance competitions in 2011 and 2013, respectively. The record also contains published materials about a 2018 performance and the artists who created and starred in that performance. The published materials included photographs of the performance and the list of performers comprising the cast, which included the Petitioner, whose bio, along with those of the other performers, was also included. In sum, we find that the submitted documents offer sufficient evidence that the Petitioner displayed her work at an artistic exhibition or showcase and that she therefore met the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(vii). As such, we will withdraw the Director’s adverse determination regarding this criterion. *See* 6 USCIS Policy Manual, F.2(B)(1), <https://www.uscis.gov/policy-manual>.

B. Remaining Criteria

Notwithstanding our favorable determination concerning the criterion at 8 C.F.R. § 204.5(h)(3)(vii), the record supports the Director’s adverse findings regarding the remaining criteria, which we will address below with the exception of the criterion at 8 C.F.R. § 204.5(h)(3)(i), as explained earlier.

First, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in professional associations. To meet this criterion, the Petitioner must show that she is or was a member in an association in her field, that the association requires outstanding achievements of its members, and that this requirement is judged by national or international experts in the field.

The Petitioner claims that she satisfies this criterion based on her membership in the Chinese Dancers Association and the Guangdong Provincial Examination District Committee. She asserts that her membership in these organizations “underscores her exceptional standing within the dance community.” The Petitioner also states that she is “the general manager and legal representative” of the [REDACTED] highlighting her respective memberships as “evidence of her outstanding achievements” and her “commitment to advancing dance arts and meeting the high standards set by these influential organizations.”

The Petitioner’s initial supporting evidence pertaining to this criterion included: 1) a translation of the Petitioner’s membership certificate, which includes a photograph of the Petitioner and lists her name, sex, date of birth, and her position as “Secretary General of [REDACTED] [REDACTED] 2) a translation of the corresponding organization’s membership guide, stating that members are responsible for restoring lost membership certificates and are required to pay membership fees; 3) a translated registration certificate titled “Inheriting and Developing Folk Dance Harmonizing and Unifying Talents”; and 4) a translated membership certificate for “The China Institute of Ministry Nationality Dance.”² Neither the registration certificate nor the latter membership certificate listed an individual’s name and thus neither demonstrates the Petitioner’s membership in either organization. Further, the Petitioner did not provide evidence demonstrating her claimed membership in the Chinese Dancers Association or the Guangdong Provincial Examination District Committee, nor did she establish that her membership or position with the [REDACTED] [REDACTED] required outstanding achievements as judged by experts in the field.

In the Petitioner’s response to a request for evidence (RFE), she did not further mention the Guangdong Provincial Examination District Committee or her affiliation with that organization; she mentioned only her membership in the Chinese Dancers Association and her position as Secretary General of the [REDACTED]. However, her supporting evidence includes resubmissions of the documents described in numbers 1-4, above. She did not submit evidence to support her claimed membership in the Chinese Dancers Association, which she has listed separately from her membership in the [REDACTED] thus indicating that these are two distinct organizations. The Petitioner also provided a document titled “Constitution” and “Articles of Association” pertaining to the Beijing Chinese Folk Dancers Association, but she provided no evidence of her membership in that association to explain the relevance of these documents.

Although the Petitioner provided what appears to be a translation of the rules of the [REDACTED] [REDACTED] the record does not contain the corresponding foreign version of this document. The record also does not contain a translator’s certificate identifying the translator and affirming the translator’s certification as to the completeness and accuracy of the translation and the translator’s competency to translate from the foreign language into English. *See* 8 C.F.R. § 103.2(b)(3). And aside from the Petitioner’s failure to comply with this regulatory requirement, it does not appear that the translated material would result in the Petitioner meeting the criterion at 8 C.F.R. § 204.5(h)(3)(ii). Article 8 of the translation, which lists the membership criteria, contains

² All four translations contain a translator’s name and certification attesting to the accuracy of the translated content, but none was accompanied by a copy of the original corresponding foreign document. Although we have acknowledged the listed submissions, it does not appear that they are in compliance with the regulation at 8 C.F.R. § 103.2(b)(3).

the following professional requirements: “2[.] dance professional education, has outstanding dance specialty, full-time or part-time engaged in dance recreation, performance, teaching, training, theory, organization, have certain professional level, or above the district level . . . culture, education departments or city dance and other inter-district folk organizations hosted the competition awards the winners and or intermediate above the professional and technical personnel.” These requirements do not indicate that outstanding achievement is a condition for membership.

On appeal, the Petitioner points to previously submitted evidence and highlights the contents of Article 33 of the rules document pertaining to the [REDACTED] However, aside from the lack of evidence showing that the translation is not in compliance with 8 C.F.R. § 103.2(b)(3), the Petitioner’s claim as to the contents of Article 33 is not supported by the previously submitted translation. Namely, the Petitioner claims that pursuant to Article 33, “a Secretary General must ‘have the corresponding professional knowledge, experience, and ability, be familiar with the industry situation, and have great impact in the business field of the association.’” However, a review of the translated material shows the following: “Article 33 The Association shall establish a strict financial management system to ensure that the accounting materials are legal, true, accurate and complete.” This inconsistency further undermines the Petitioner’s claim and the contents of the translated material. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence).

Given the evidentiary deficiencies discussed above, the Petitioner has not established that she satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ii) through her membership in the [REDACTED] [REDACTED] Although the Petitioner also reiterates her claimed membership with the China Institute of Ministry Nationality Dance, as stated above, the supporting evidence includes only a translated membership certificate which does not list the Petitioner’s name. As such, the evidence does not support the Petitioner’s claimed membership in this organization.

Next, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence that material about a petitioner and their work in the field of endeavor has been published in a professional or major trade publication or other major media.

Despite acknowledging that the Petitioner submitted articles where she was featured or mentioned, the Director determined that the Petitioner provided no evidence that the published material was printed in professional or major trade publications or other major media. The Director pointed out that the Petitioner did not: 1) submit material to establish the circulation statistics for the publishing sources; 2) provide circulation data to compare with those of the submitted publications; or 3) establish the intended audience of the publications containing the submitted articles.

On appeal, the Petitioner refers to previously submitted evidence and argues that the internet platforms containing her articles are “well established” and further states that the platforms “have significant monthly traffic and are recognized as major media outlets in China.” However, the Petitioner does not address the Director’s concerns about the lack of evidence to support the circulation statistics she previously provided or the lack of comparative circulation data. In sum, the record lacks evidence demonstrating the significance of the statistics the Petitioner previously provided or evidence that such information published on internet platforms reflects status as major media. For the reasons discussed herein, the Petitioner has not overcome the Director’s adverse determination regarding this criterion.

We now turn to the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence that the Petitioner participated as a judge over the work of others in her field.

The record contains a document titled [REDACTED] with the phrase “Proof of invitation” directly below the title of a statement discussing the details of a square dance competition. Although the Petitioner provided what appears to be a foreign version of the translated document, the translation is not accompanied by a translator’s certification attesting to its completeness and accuracy or confirming the translator’s competency to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The record also contains several photographs depicting the Petitioner sitting at a rectangular table alongside several individuals. One of the photographs consists of a closeup depiction of a card that was placed in front of each individual seated at the table, while another photograph is a closeup of the Petitioner with the word “judge” typewritten on the photograph below one of the cards and the Petitioner’s name similarly typewritten on the photograph near her image; the phrase “The Petitioner” is handwritten and appears directly above the Petitioner’s typewritten name. As with the previously discussed invitation, the foreign language content was not accompanied by the required translator certification nor does the typewritten material appear to have been part of the original image. These deficiencies therefore undermine the probative value of the photograph. *See id.*

Although the Director acknowledged the submitted evidence, it was deemed insufficient as proof of the Petitioner’s actual participation as a judge. On appeal, the Petitioner disputes the Director’s findings, highlighting the previously submitted photographs of the Petitioner “in action as a judge” and pointing out that the card in front of the Petitioner, labeling her as a judge, is “clearly visible.” As noted above, the source of the translation and competency of the translator remain unknown thereby leading us to question the accuracy of the translation. *Id.* Likewise, the article that purportedly discusses the competition that the Petitioner is claimed to have judged similarly lacks a certified translation, thereby precluding us from relying on the submitted materials as sufficient evidence that the Petitioner satisfied the elements of the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

Next, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence of the Petitioner’s original contributions of major significance in the field. Thus, not only must the Petitioner establish that she made original contributions, but also that the contributions have been of major significance in her field.

In denying the petition, the Director noted that the Petitioner provided recommendation letters, news articles, and evidence of her work as a director rather than her prior work as a dancer and choreographer. However, the Director determined that the Petitioner did not provide corroborating evidence establishing that her contributions were original or that they have been of major significance in her field.

On appeal, the Petitioner points to previously submitted documents as evidence that she made contributions to the field of dance. The question here, however, is not whether the Petitioner contributed to her field, but rather whether the contributions she made were original and of major significance. Although the Petitioner also argues that she founded [REDACTED]

opened her own training institution, the record does not contain evidence corroborating these claims. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (stating that assertions must be supported by relevant, probative, and credible evidence). In fact, the Petitioner had not previously mentioned this style of dance, nor had she previously submitted evidence concerning this claim. Although the Petitioner did reference “a dance-focused business in [redacted] which she claimed to have “successfully established and expanded,” she neither claimed nor provided evidence to show that she founded an original form of dance. The Petitioner also highlighted her “pivotal role” in a dancer’s association, asserting that she “played a crucial role in [redacted] cultural landscape” which she claims benefited from her “strategic vision and business-like contributions.” However, these assertions do not address the critical question of whether the Petitioner’s contributions were original and of major significance in her field.

The Petitioner also described a dance event in which she claims to have used an “innovative approach” of integrating dance with live music “to engage with the local business district and the community.” However, the record lacks evidence that this approach was an original contribution of the Petitioner or that it was of major significance in the field. Likewise, the Petitioner did not document the originality or major significance of her contributions to a multi-day youth dance event to which she claims to have made “impactful contributions.” Most of the articles the Petitioner submitted about this event discuss the event itself and mention the event’s sponsors and participants. One article mentions the Petitioner’s role as a teacher, stating that she “taught technical skills of folk dance and jazz dance respectively.” But none of the submitted materials indicate that the Petitioner made an original contribution.

Another submission that the Petitioner highlights on appeal is a recommendation letter from Ms. [redacted] a fellow dancer who stated that she “worked closely with” the Petitioner and can attest to the Petitioner’s significant contributions to the field of dance. Ms. [redacted] referred to the Petitioner’s “profound passion for her art, particularly in Kazakh ethnic dance” and discussed her collaboration with the Petitioner in a musical theater production featuring ethnic minority dancing and live music. Although Ms. [redacted] spoke highly of the Petitioner and her ability in the art of dance, she did not specify an original contribution or discuss how the Petitioner has significantly impacted the field of dance through an original contribution. In another recommendation letter, the Petitioner’s professor broadly stated that her “potential contributions extend beyond the stage, as she actively engages with local communities, teaches dance workshops, organizes cultural events, and mentors aspiring dancers.” However, no specific original contribution was identified.

The Petitioner also mentions her role as “an Industry Expert and Judge” in a 2023 competition. As noted earlier, however, the Petitioner has not provided sufficient evidence to establish that she, in fact, carried out this role; and even if such evidence were submitted, it is unclear how her role as a judge satisfies any of the elements of this criterion, which requires an original contribution of major significance in the field.

Merely establishing that the Petitioner contributed to her field, or even that a contribution she made was original is not sufficient. The Petitioner would have to satisfy all elements of this criterion, which requires not only an original contribution, but also that the contribution be of major significance in her field. The record lacks sufficient evidence showing that the Petitioner satisfied all of the elements of this criterion.

Lastly, we will address the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the Petitioner performed in a leading or critical role for a distinguished organization.

The Petitioner has consistently maintained that her role as Secretary General of the [REDACTED] [REDACTED] was leading or critical. However, the Petitioner's initial supporting documents were deemed insufficient to support her claims. As such, the Petitioner was instructed in a request for evidence to further document her role with the association as leading or critical. The Petitioner's response included several documents with the name of the association at the heading. One document purported to list the organization's vice chairman, deputy secretary general, and directors, while the other document purported to list the association's rules. In the denial, however, the Director pointed out that the documents submitted "were only the translations."

Our review of the evidence confirms that while the document contains a stamp with foreign writing on the last page, a copy of the original foreign language version of the document was not submitted. As previously discussed, the document was not accompanied by a translator's certification attesting to the completeness and accuracy of the translation or the ability of the translator to translate the material in question from the foreign language into English, as required by 8 C.F.R. § 103.2(b)(3).

On appeal, the Petitioner continues to rely on the deficient document as evidence that she satisfied the elements of the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Although the Petitioner also points to evidence of her membership and position as Secretary General within the [REDACTED] [REDACTED] the membership document, despite containing a translator's certification, was also submitted without a copy of the original foreign language version of the document being translated. Further, even if the Petitioner's member ID card was in full compliance with 8 C.F.R. § 103.2(b)(3), this document contains no information about the duties her role entailed. The Petitioner's position title alone precludes a comprehensive understanding of the leading or critical nature of her role. *See* 6 USCIS Policy Manual, F.2(B)(1), <https://www.uscis.gov/policy-manual>.

The Petitioner also contends that she "played a leading role in organizing and executing a three-day dance exchange activity"; she highlights that evidence of the event's success "is confirmed by media coverage from major Chinese outlets." We note, however, that according to the plain language of the regulation, the leading or critical role must be within an organization or establishment. The Petitioner's role in an event does not satisfy the specific elements of this criterion.

For the reasons discussed above, the Petitioner has not established that she has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

C. Reserved Issues

As previously noted, the Petitioner also asserts that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(i), which relates to lesser nationally or internationally recognized prizes or awards. However, given the deficiencies described above, we need not determine whether the Petitioner meets the requirements of this criterion, and we will reserve this issue. *See INS v. Bagamasbad*, 429 U.S. at 25-26.

III. CONCLUSION

The Petitioner has not shown that she met either a one-time award, or three of ten initial criteria. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who have risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.